

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL STEPHANSKI,

Plaintiff,

v.

ORDER
04-CV-552A

ROXANNE ARNONE, et al.,

Defendants.

The above-referenced case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(B). On November 28, 2007, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant's motion should be denied as to plaintiff's excessive force and failure to intervene claims and, as to the deliberate indifference to serious medical need claim, should be granted insofar as plaintiff has failed to sustain the objective component of the claim or, alternatively, summary judgment should be denied insofar as a genuine issue of material facts exists as to the subjective component of the claim, and, as a further alternative, summary judgment based on qualified immunity be denied.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, the Court grants plaintiff's claim of deliberate indifference to a serious medical need, but denies plaintiff's excessive force and failure to intervene claims. Defendant's motion for summary

judgment on qualified immunity grounds is also denied.

The parties shall appear on Tuesday, March 4, 2008 at 9:00 a.m. for a meeting to set a trial date.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: February 13, 2008